THE HON'BLE MR JUSTICE J.CHELAMESWAR

AND
THE HON'BLE MR JUSTICE M. VENKATESWARA REDDY

WRIT PETITION No: 8523 of 2006

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Date: 26.04.2006

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Between:

M/s. Sri Venkateswara Oil Mill,

Main Bazar, Tadipatri,

Anantapur District, rep., by its

Proprietor, Sri A. Ramanjaneyulu.

... PETITIONER.

AND

The Commercial Tax Officer,

Tadipatri & another.

... RESPONDENTS.

THE HON'BLE MR JUSTICE J.CHELAMESWAR

AND

THE HON'BLE MR JUSTICE M. VENKATESWARA REDDY

WRIT PETITION No.8523 of 2006

ORDER:- (PER THE HONOURABLE JC,J)

This writ petition is filed with a prayer as follows:

> "… …Hon'ble Court may be pleased to issue a writ or order or direction particularly one in the nature of Writ of Mandamus granting stay of collection of the disputed penalty of Rs.8,44,275/- for the assessment year 2000-2001 under the APGST Act payable in pursuance of the stay rejection order of the 3rd respondent dated 09.03.2006 passed in LIII(3)/229/2006 pending disposal of the appeal before the 2nd respondent or to pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case."

The petitioner, a propriety concern, is an oil mill manufacturing edible oils from out of the sunflower and groundnut seeds located at Tadipatri of Anantapur District. For the assessment year 2000-2001, the petitioner's liability for tax under A.P. General Sales Tax Act (for short "the Act") was assessed on 23.08.2002. The petitioner claimed some part of the turnover of that assessment year, is entitled for exemption under the Act, while computing the taxable turn over. It appears that the claim of the petitioner in this regard was rejected and a final order of assessment was passed as indicated above. Aggrieved by the assessment order, the petitioner preferred an appeal before the A.P. Sales Tax Appellate Tribunal.

Three years after the assessment year, the 1st respondent – Commercial Tax Officer, Tadipatri, issued proceedings dated 22.11.2005, invoking Section 14(2) of the Act and purported to have levied a penalty of Rs.8,44,275/- for the assessment year 2000-2001 on various grounds, the details of which may not be necessary for the present.

Aggrieved by the order of levying penalty, the petitioner carried the matter to the 2nd respondent herein in Appeal No.24 of 2005-2006 and sought stay of recovery of the amount of penalty, which is the subject matter of the appeal. It appears that the stay application of the petitioner stood rejected by an order of the 2nd respondent dated 30.01.2006. Aggrieved thereby, the petitioner carried the matter to the 3rd respondent in revision unsuccessfully. By an order, dated 09.03.206, the 3rd respondent rejected the said revision. Hence, the present writ petition.

The learned counsel for the petitioner submitted that the language and scope of Section 14(2) fell for consideration by a Full Bench of this Court. Section 14(2) reads as follows:

> "When making an assessment to the best of judgment under sub-section (1), the assessing authority may also direct the dealer (to pay in addition to the tax assessed a penalty as specified in sub-section (8)) on the turnover that was not disclosed by the dealer in his return."

Though Section 14(2) did not demand the assessing authority to pass an order of penalty simultaneously with an order of assessment in connection with a specific assessment order, the Full Bench opined that there must be some proximity of time between the date of order of assessment and the date of order imposing the penalty.

Heard the learned Government Pleader.

A gap of three years three months, in our view, can never be said to be a reasonable time lapse in making the orders of assessment and penalty proximate.

In the circumstances, we are of the opinion that the writ petition is required to be allowed at this stage directing stay of recovery of the amount of penalty demanded under proceedings dated 22.11.2005 of the 1st respondent pending final decision in the abovementioned appeal.

Accordingly, the writ petition is allowed. No order as to costs.

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J.CHELAMESWAR, J

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M. VENKATESWARA REDDY, J

Date: 26.04.2006

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